

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN SENATE FEBRUARY 14, 2009

AMENDED IN ASSEMBLY JANUARY 7, 2009

CALIFORNIA LEGISLATURE—2009–10 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 2

Introduced by Assembly Member Evans

January 5, 2009

~~An act to amend Items 3910-004-0226, 3910-004-0281, and 3910-007-0387 of Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), and to amend Items 0690-102-0001, 0690-102-0214, 0690-102-0597, 0690-113-0001, 0890-001-0001, 1870-012-0214, 2640-101-0046, 2660-302-0042, 2660-302-0890, 3790-001-0001, 3790-001-6051, 4140-011-0121, 4170-101-0001, 4300-101-0001, 5180-111-0001, 5225-101-0001, 6440-001-0001, 6600-001-0001, 6610-001-0001, 6610-002-0001, 8660-011-0470, 8660-011-0471, 8660-011-0483, and 9210-101-0001 of, and to add Items 2180-011-0067, 2660-013-0042, 3560-011-0347, 3680-011-0516, 3790-011-0263, 3910-011-0226, and 8120-013-0268 to, Section 2.00 of the Budget Act of 2008 (Chapters 268 and 269 of the Statutes of 2008), and to amend Section 28.00 of, and to add Sections 3.90, 8.25, and 35.10 to, the Budget Act of 2008, relating to the support of state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to add Section 8587.3 to the Government Code, to add Section 16031 to the Insurance Code, to add Section 5010.3 to the Public Resources Code, to amend Sections 30005.5, 30016, 30104, 30108, 30165.1, 30181, and 30436 of, to add Sections 7374, 10751.5, and 60709 to, to add Article 2.5 (commencing with Section 30130.3) to Chapter 2 of Part 13 of, to add Part 21 (commencing with Section 42001) to, to repeal Chapter 2 (commencing~~

with Section 7360) of Part 2 of, and to repeal Chapter 2 (commencing with Section 60050) of Part 31 of, Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2, as amended, Evans. ~~Budget Act of 2008: revisions.~~ *VLF state parks fee: fuel taxes: emergency services surcharge: cigarettes and other tobacco products tax: oil severance tax.*

Existing law provides that the Insurance Commissioner, in cooperation with insurers, the Office of Emergency Services, and other emergency service agencies, shall establish procedures for the coordination of efforts between insurers and their representatives and those of emergency response agencies.

This bill would create the Emergency Response Fund in the State Treasury. Insureds would be required to pay a special purpose surcharge at a rate of 4.8% (or as adjusted) on commercial and residential fire and multiperil insurance policies, including policies with combined property and liability coverage, issued or renewed on or after January 1, 2010, as specified. Funds from this surcharge would be available for appropriation by the Legislature to fund emergency activities, as defined, of the California Emergency Management Agency, the Department of Forestry and Fire Protection, and the Military Department. Any balance remaining in the fund at the end of a fiscal year would be retained and carried forward to the next fiscal year. This bill would require insurers collecting the surcharge to make a specified disclosure on the policy declarations page, billing statement, or a separate document accompanying the declarations page or billing statement. This bill would also require the Department of Insurance, the Department of Forestry and Fire Protection, and other state agencies and departments to cooperate and provide information to the California Emergency Management Agency as necessary to implement these provisions.

The Vehicle License Fee (VLF) Law establishes, in lieu of any ad valorem property tax upon vehicles, an annual license fee for any vehicle subject to registration in this state. Under the California Constitution and existing law, the fees are deposited into the Vehicle License Fee Account of the Local Revenue Fund in the State Treasury for allocation to cities, counties, and cities and counties.

This bill would additionally impose an annual surcharge in the amount of \$15 on every vehicle subject to the VLF to sustain the operation and maintenance of the state park system, among other things. The bill would create the State Parks Access Fund in the State Treasury and would require that the \$15 surcharge be deposited in this fund to be used for specified purposes by the Department of Parks and Recreation upon appropriation by the Legislature.

The Motor Vehicle Fuel License Tax Law imposes a tax of \$0.18 per gallon of fuel and requires, if the federal fuel tax is reduced below the rate of \$0.09 per gallon and federal financial allocations to this state are reduced or eliminated, that the tax rate be increased so that the combined state and federal tax rate per gallon equals \$0.27. The Diesel Fuel Tax Law imposes a tax of \$0.18 upon each gallon of fuel, as provided.

This bill would eliminate those fuel taxes on October 1, 2009.

The Cigarette and Tobacco Products Tax Law, the violation of which is a crime, imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99) and the California Families and Children Act of 1998 (Proposition 10). That law imposes a tax upon the distribution of tobacco products at a tax rate which is equivalent to the combined rate of all taxes imposed on cigarettes, which is deposited in specified accounts.

This bill would, commencing on October 1, 2009, impose an additional excise tax on the distribution of cigarettes at the rate of \$0.075 for each cigarette distributed, which would, under Proposition 99, impose an equivalent tax rate on the distribution of tobacco products. This bill would also impose a tax upon the distribution of tobacco products at the same equivalent tax rate, as specified. The bill would impose a floor stock tax and require a dealer or wholesaler to file a return with the State Board of Equalization showing the number of cigarettes in his or her possession or under his or her control on that date, as specified, and to remit the tax to the board. The revenues collected from the additional tax, except as specified, would be deposited in the General Fund.

Because this bill would impose new requirements under the Cigarette and Tobacco Products Law, the violation of which is a crime, it would impose a state-mandated local program.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law,

the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose an oil severance tax on and after October 1, 2009, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the rate of 9.9% (or as adjusted) of the gross value of each barrel of oil severed. The tax would be administered by the Department of Conservation and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the department to deposit all tax revenues, penalties, and interest collected pursuant to these provisions into the General Fund.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

This bill would take effect immediately as a tax levy.

~~The Budget Act of 2008 (Chapters 268 and 269 of the Statutes of 2008) made appropriations for the support of state government during the 2008–09 fiscal year.~~

~~This bill would amend the Budget Act of 2008 to make adjustments to certain items of appropriations. The bill would authorize the Director of Finance to allocate necessary reductions in employee compensation from General Fund items in the amount of \$385,762,000 and from items relating to other funds in the amount of \$285,196,000. The bill would state the intent of the Legislature that reductions in employee~~

compensation will result in General Fund savings of \$1,024,326,000 and other fund savings of \$688,375,000 in the 2009–10 fiscal year.

The bill also would set forth procedures to account for the receipt of federal funds as part of an economic stimulus or similar legislation during the 2008–09 and 2009–10 fiscal years.

The Budget Act of 2003 (Chapter 157 of the Statutes of 2003) makes appropriations for the support of state government during the 2003–04 fiscal year and, among other things, authorizes transfers to the General Fund from certain special funds to be repaid to those funds during the 2nd half of the 2008–09 fiscal year.

This bill would amend the Budget Act of 2003 to extend the time for repayment of those transfers to the 2nd half of the 2009–10 and 2011–12 fiscal years, as specified.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$ majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 8587.3 is added to the Government Code,
- 2 to read:
- 3 8587.3. (a) (1) On October 1, 2010, and each year thereafter,
- 4 upon appropriation by the Legislature, 31.3 percent of the funds
- 5 deposited in the Emergency Response Fund created pursuant to
- 6 Section 16031 of the Insurance Code shall be allocated for the
- 7 purposes specified in this section.
- 8 (2) The Secretary of California Emergency Management shall
- 9 allocate the funds specified in paragraph (1) to entities within an
- 10 operational area as specified in Section 8605, and that are
- 11 participants in the Master Mutual Aid Agreement as defined by

1 Section 8561. The funds shall be allocated to entities based upon
2 both of the following:

3 (A) A pro rata share of fees collected for the Emergency
4 Response Fund created pursuant to Section 16031 of the Insurance
5 Code within that operational area.

6 (B) The population served by each local fire agency or special
7 district that provides fire protection within that operational area.

8 (3) On an annual basis, any funds that are not allocated and
9 are not scheduled to be allocated from the Emergency Response
10 Fund created pursuant to Section 16031 of the Insurance Code
11 for the support of state expenditures, shall, upon appropriation
12 by the Legislature, be allocated to the program for the purposes
13 specified in this section, and shall be allocated by the secretary
14 pursuant to paragraph (2).

15 (b) Entities that receive an allocation pursuant to subdivision
16 (a) shall use the funds to enhance or sustain fire and rescue
17 disaster mutual aid capacity to combat the effect of all hazard
18 disasters in any of the following areas:

19 (1) Disaster response capacity.

20 (2) Communications interoperability that comply with Section
21 8592.5.

22 (3) Household and individual preparedness outreach and
23 education.

24 (4) Programs to immediately reduce community vulnerability
25 to hazards identified in their approved hazard mitigation plan
26 pursuant to Section 65302.6.

27 (c) Entities that receive an allocation pursuant to subdivision
28 (a) may use the funds to support personnel, training, exercises,
29 equipment, construction, and other activities that enhance or
30 sustain disaster mutual aid capacity, or reduce community
31 vulnerability to disasters.

32 (d) For purposes of promoting the implementation and
33 functioning of the program, upon appropriation by the Legislature,
34 the secretary may allocate funds to reimburse agencies and special
35 districts that provide staff support for operational area or regional
36 fire and rescue coordination.

37 (e) Funds allocated to entities pursuant to this section shall not
38 be used to supplant any existing funds allocated to that entity by
39 the California Emergency Management Agency for fire and rescue
40 services.

SEC. 2. *Section 16031 is added to the Insurance Code, to read:*
 16031. (a) *The Emergency Response Fund is hereby created in the State Treasury. Funds received by the California Emergency Management Agency pursuant to this section shall be deposited into this fund. Funds deposited into this fund may be appropriated by the Legislature for the purposes of this section to fund the emergency activities of the California Emergency Management Agency, the Department of Forestry and Fire Protection, and the Military Department.*

(b) *For policies issued or renewed on or after January 1, 2010, insureds shall pay a special purpose surcharge on each commercial and residential fire and multiperil insurance policy issued or renewed on or after January 1, 2010, equivalent to 4.8 percent of the premium written on property exposure for commercial or residential insurance properties in California. The surcharge shall only be applied to new business and renewal transactions. No adjustment shall be made for midterm increases or decreases in exposure or coverage. The amount of the surcharge shall be calculated to the nearest dollar. Notwithstanding any other provision of law, failure to collect the surcharge from insureds prior to April 1, 2010, shall not result in a penalty, fine, or other liability.*

(c) *Notwithstanding subdivision (b), for each calendar year beginning on or after January 1, 2011, the 4.8 percent rate specified in subdivision (b) shall be adjusted in the following manner:*

(1) *The following reports shall be made to the Director of the Department of Finance in accordance with a time schedule prescribed by the director:*

(A) *The California Emergency Management Agency shall report the increase in revenues for the 2009–10 fiscal year, and each fiscal year thereafter, attributable to this section.*

(B) *The State Board of Equalization shall report the increase or decrease, as applicable, in revenues for the 2009–10 fiscal year, and each fiscal year thereafter, attributable to Sections 30016, 30104, 30108, 30165.1, 30182, and 30436 of the Revenue and Taxation Code, as amended by the act adding this section, attributable to Article 2.5 (commencing with Section 30130.31) of Chapter 2 of Part 13 of the Revenue and Taxation Code, as added by the act adding this section, and attributable to the repeal of*

Chapter 2 (commencing with Section 7360) of Part 2 of, and Chapter 2 (commencing with Section 60050) of Part 31 of, Division 2 of the Revenue and Taxation Code by the act adding this section.

(C) The Department of Conservation shall report the increase in revenues for the 2009–10 fiscal year, and each fiscal year thereafter, attributable to Part 21 (commencing with Section 42001) of Division 2 of the Revenue and Taxation Code, as added by the act adding this section.

(D) The Department of Motor Vehicles shall report the increase in revenues for the 2009–10 fiscal year, and each fiscal year thereafter, attributable to Section 10751.5 of the Revenue and Taxation Code, as added by the act adding this section.

(2) (A) Based on the information reported pursuant to paragraph (1), the Director of the Department of Finance shall adjust for the 2011 calendar year, and each calendar year thereafter, the 4.8 percent rate specified in subdivision (b) in that manner as to result in no net revenue gain or loss in state taxes pursuant to the act adding this section for all calendar years. The department's adjustment shall take into account any actual net revenue gain or loss in the fiscal year preceding the year of adjustment, as well as its estimate of the projected revenue changes attributable to the act adding this section in the year of the adjustment. If this adjustment is insufficient to achieve revenue neutrality in the subsequent calendar year, the Department of Finance shall then also adjust the 9.9 percent rate specified in Section 42003 in order to provide revenue neutrality for each calendar year. The intent of this subdivision is to ensure that the act adding this section does not produce a net revenue gain.

(B) Notwithstanding any other law to the contrary, any adjustment to the rates pursuant to this paragraph shall not result in a rate that exceeds either the 4.8 percent or 9.9 percent rate, as applicable.

(d) Every admitted insurer in this state shall collect the emergency response surcharge specified in subdivision (b), which shall be separately identified on each policy, with respect to the property portion of commercial or residential fire and multiperil insurance.

(e) For those policies on which the surplus line tax is paid by a surplus line broker pursuant to Sections 1775.1 to 1775.5, inclusive, the surplus line broker shall collect the emergency

1 response surcharge with respect to the property portion of any
2 homeowners policy, all risk insurance policy, or named peril
3 insurance policy that specifically includes fire coverage placed
4 with a nonadmitted insurer. Where those policies cover multistate
5 risks, the surcharge shall be applied pro rata to that portion of
6 the premium allocated to risks in this state based on the percentage
7 of the property risk located in California.

8 (f) (1) Funds received as a result of the surcharge imposed on
9 insureds as a percentage of premiums written on property
10 exposures for both commercial and residential insurance policies
11 shall be remitted by the admitted insurers to the California
12 Emergency Management Agency, or other state agency designated
13 to collect the surcharge on behalf of the California Emergency
14 Management Agency, within 45 days following the end of each
15 calendar quarter. The premiums written by admitted insurers for
16 property exposures shall be as stated on lines 1, 4, and 5.1 of the
17 annual statement filed by each insurer pursuant to Section 900.

18 (2) Funds received as a result of the surcharge imposed on
19 insureds as a percentage of premiums written on property
20 exposures for both commercial and residential insurance policies
21 placed with a nonadmitted insurer shall be remitted by the surplus
22 line brokers to the Surplus Line Association in the same manner
23 and form as the stamping fee paid on the policies placed with a
24 nonadmitted insurer by a surplus line broker. The Surplus Line
25 Association shall remit the funds received from surplus line brokers
26 to the California Emergency Management Agency, or its designee,
27 within 45 days following the end of each calendar quarter.

28 (g) None of the special purpose surcharges shall be considered
29 premiums for any purpose, including the computation of gross
30 premium tax or agent's commission. The full amount of the
31 surcharge is due at inception or renewal of the insurance policy,
32 even if the premium is paid in installments. The amount of each
33 special purpose surcharge shall be separately stated on either a
34 billing or policy declaration sent to an insured. Notwithstanding
35 this subdivision, an admitted insurer or surplus line broker may
36 omit collecting of the surcharge from its insured if the expense of
37 collecting the surcharge would exceed the amount of the surcharge
38 and instead remit the amount of omitted surcharges to the
39 California Emergency Management Agency or its designee,
40 provided that nothing in this subdivision shall relieve the admitted

insurer or surplus line broker of its obligation to recoup the amount of the surcharge otherwise collectible.

(h) (1) For commercial policies with combined property and liability coverage, for which the actual property coverage cannot be determined, the admitted insurer shall calculate, and the insured shall remit, the surcharge based upon the ratio of 50 percent attributable to the property coverage. Within 45 days following submission of its annual statement to the National Association of Insurance Commissioners, an admitted insurer shall reconcile its lines 1, 4, and 5.1 surcharge remittances based upon its annual statement.

(2) For policies for which a surplus line tax is paid by a surplus line broker pursuant to Sections 1775.1 to 1775.5, inclusive, for risks with combined property and liability coverage, the surplus line broker shall calculate and the insured shall remit the surcharge based on a ratio of 50 percent attributable to the property coverage.

(i) Each admitted insurer and surplus line broker collecting the surcharge shall be required to disclose the surcharge as the “California Emergency Response Safety Surcharge” on either the declarations page, the billing statement, or a separate document accompanying the declarations page or billing statement. If an insurer chooses to provide supplemental materials to policyholders describing the surcharge, the language shall comply substantially with the following:

“The State of California has imposed an Emergency Response Safety Surcharge on all residential and commercial insurance policies issued or renewed on or after January 1, 2010. The purpose of this surcharge is to ensure adequate funding of emergency response services throughout California. We are required by law to collect the surcharge from our policyholders. The surcharge, which is separately stated on your declarations page or billing statement, is calculated at 4.8 percent (or adjusted amount) of the total policy premium relating to property insurance.”

(j) Failure of an insured to pay the surcharge shall be treated as a failure to pay the premium. Failure to pay the surcharge shall result in the cancellation of the policy.

1 (k) *If a policy is canceled before the end of the term for which*
2 *it was issued or the end of the period for which a premium has*
3 *been paid, the refund of the surcharge amount submitted to the*
4 *California Emergency Management Agency or its designee shall*
5 *be remitted to the insured. However, any assessable policy of*
6 *insurance that is canceled as of the effective date of the policy, if*
7 *all of the premium is returned to the insured, and no coverage was*
8 *ever provided to the insured, shall not be subject to a surcharge.*
9 *All refunds of previously collected surcharges on those canceled*
10 *policies shall be applied to reduce the surcharges reported in the*
11 *same calendar quarter in which the refunded surcharges were*
12 *made.*

13 (l) *Funds in the Emergency Response Fund shall be distributed,*
14 *upon appropriation, to the California Emergency Management*
15 *Agency, the Department of Forestry and Fire Protection, and the*
16 *Military Department for the support of the emergency response*
17 *activities of those departments, and to the California Emergency*
18 *Management Agency or its designee for the actual administrative*
19 *costs incurred in collecting the surcharge pursuant to this section,*
20 *and for the maintenance of an adequate reserve.*

21 (m) *Any balance remaining in the Emergency Response Fund*
22 *at the end of each fiscal year shall be retained in the fund and*
23 *carried forward to the next fiscal year.*

24 (n) *The Department of Insurance, the Department of Forestry*
25 *and Fire Protection, and other state agencies and departments*
26 *shall cooperate and provide information to the California*
27 *Emergency Management Agency as necessary to implement this*
28 *program.*

29 (o) *For the purposes of this section, the following definitions*
30 *apply:*

31 (1) *“Admitted insurer” means an insurer that has secured a*
32 *certificate of authority from the commissioner as required by*
33 *Section 700 and is subject to the tax set forth in Section 28 of*
34 *Article XIII of the California Constitution.*

35 (2) *“Hazard” means the potential impact to people or property*
36 *as a result of seismic activity, flood, or wildland fire.*

37 (3) *“Surplus line broker” means a person licensed pursuant to*
38 *Section 1765.2.*

1 (p) For purposes of this section, “FAIR Plan” established
2 pursuant to Chapter 9 (commencing with Section 10090) of Part
3 1 of Division 2, is an admitted insurer.

4 SEC. 3. Section 5010.3 is added to the Public Resources Code,
5 to read:

6 5010.3. (a) The Legislature finds and declares all of the
7 following:

8 (1) The California state park system is a unique resource that
9 must be preserved and protected for future generations.

10 (2) California’s state park system is the largest in the nation
11 and contains over 1.5 million acres of land managed for natural,
12 cultural, and historical resource values in 279 parks across the
13 state.

14 (3) California’s state park system hosts more than 80 million
15 visitors annually and houses over 3,100 historic buildings and
16 more than 14,000 individual and group campsites.

17 (4) The budget for the state park system has not kept up with
18 the state’s population growth and growing demand. The annual
19 budget for state parks is approximately one hundred seventeen
20 million dollars (\$117,000,000) less than the amount necessary to
21 adequately maintain and operate the parks based on current
22 demand. This ongoing shortfall has caused a burgeoning backlog
23 of deferred maintenance of over one billion two million dollars
24 (\$1,200,000,000) in 2008.

25 (5) Californians deserve a world-class state park system that
26 will preserve and protect the unique resources of the state for
27 future generations.

28 (6) To address the need to fully fund the state parks system, it
29 is the intent of the Legislature in enacting this act to establish a
30 stable, reliable, and adequate funding source for the state park
31 system and to protect the state’s natural resources, while also
32 providing increased and equitable access to those resources for
33 all Californians.

34 (7) Proper maintenance of the state park system will allow
35 California to continue to draw the millions of tourists each year
36 who contribute to the state’s multibillion dollar tourism economy.

37 (8) Imposition of the fee under this act is intended to ensure
38 that the state park system is operated and maintained at a level of
39 excellence and to allow increased access to state parks for all
40 Californians.

1 (9) *It is the intent of the Legislature that imposition of the fee*
2 *under this act creates a dedicated, sustainable, and secure source*
3 *of funding to manage and protect California's state park system*
4 *in perpetuity.*

5 (10) *By instituting this new funding source for state parks, the*
6 *existing General Fund allocation currently provided to the*
7 *Department of Parks and Recreation will be returned to the*
8 *General Fund for general state budget purposes once the fee*
9 *imposed by this act has been fully implemented.*

10 (b) *The moneys collected from the fifteen-dollar (\$15) surcharge*
11 *imposed pursuant to Section 10751.5 of the Revenue and Taxation*
12 *Code shall be deposited into the State Parks Access Fund, which*
13 *is hereby created in the State Treasury, and shall be used, upon*
14 *appropriation by the Legislature, for all of the following purposes:*

15 (1) *State park operation and maintenance expenses.*

16 (2) *Up to 20 percent of the annual fee revenue may be used for*
17 *debt service on revenue bonds to pay off the deferred maintenance*
18 *deficit.*

19 (3) *Protection and management of the state's natural resources,*
20 *wildlife, and wildlife habitat consistent with the public trust*
21 *responsibilities of the state.*

22 (4) *Law enforcement and lifeguard staffing to ensure the health*
23 *and safety of visitors to the state park system.*

24 (5) *Lost vehicle entry fee revenue associated with property of*
25 *the state park system managed by other public agencies.*

26 (6) *Public education and outreach programs to maximize*
27 *accessibility of the state park system.*

28 (7) *Enhancement of the state park system, including, but not*
29 *limited to, its services and facilities to serve those areas and*
30 *populations that are currently underserved by the state park system.*

31 SEC. 4. *Section 7374 is added to the Revenue and Taxation*
32 *Code, to read:*

33 7374. (a) *This part shall become inoperative on October 1,*
34 *2009. However, this part shall remain applicable for the collection*
35 *of assessments, the liability for which accrued prior to October 1,*
36 *2009, the making of any refunds and the effecting of any credits,*
37 *the disposition of money collected, and the commencement of any*
38 *action or proceeding pursuant to this part.*

(b) Notwithstanding subdivision (a), Part 2 (commencing with Section 7360) shall become inoperative on October 1, 2009, and as of January 1, 2010, is repealed.

SEC. 5. Section 10751.5 is added to the Revenue and Taxation Code, to read:

10751.5. In addition to the license fee imposed pursuant to Section 10751, for licenses and renewals on or after January 1, 2010, there shall also be imposed an annual surcharge in the amount of fifteen dollars (\$15) on every vehicle subject to the license fee imposed by that section. The fifteen-dollar (\$15) surcharge shall be deposited into the State Parks Access Fund pursuant to Section 5010.3 of the Public Resources Code.

SEC. 5.5. Section 30005.5 of the Revenue and Taxation Code is amended to read:

30005.5. "Untaxed tobacco product" means either of the following:

(a) Any tobacco product that has not yet been distributed in a manner that results in a tax liability under this part.

(b) Any tobacco product that was distributed in a manner that resulted in a tax liability under this part, but that was returned to the distributor after the tax was paid and for which the distributor has either claimed a deduction pursuant to subdivision (c) of Section 30123 or 30131.2, or subdivision (b) of Section 30130.5, or a refund or credit pursuant to Section 30176.2 or Section 30178.2.

SEC. 6. Section 30016 of the Revenue and Taxation Code is amended to read:

30016. "Wholesaler" includes:

(a) Any person, other than a licensed distributor, who engages in this state in making sales for resale of cigarettes that are contained in packages to which are affixed stamps or meter impressions.

(b) Any person, other than a licensed distributor, who engages in this state in making sales for resale of tobacco products on which the tax imposed in Sections 30123 and 30131.2 under this part has been paid.

SEC. 7. Section 30104 of the Revenue and Taxation Code is amended to read:

30104. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common

1 carrier engaged in interstate or foreign passenger service or to a
 2 person authorized to sell cigarettes or tobacco products on the
 3 facilities of the carrier. Whenever cigarettes or tobacco products
 4 are sold by distributors to common carriers engaged in interstate
 5 or foreign passenger service for use or sale on facilities of the
 6 carriers, or to persons authorized to sell cigarettes or tobacco
 7 products on those facilities, the tax imposed by Sections 30101,
 8 ~~30123, and 30131.2~~ *under this part* shall not be levied with respect
 9 to the sales of the cigarettes or tobacco products by the distributors,
 10 but a tax is hereby levied upon the carriers or upon the persons
 11 authorized to sell cigarettes or tobacco products on the facilities
 12 of the carriers, as the case may be, for the privilege of making sales
 13 in California at the same rate as set forth in Sections 30101, ~~30123,~~
 14 ~~and 30131.2~~ *under this part*. Those common carriers and authorized
 15 persons shall pay the tax imposed by this section and file reports
 16 with the board, as provided in Section 30186.

17 *SEC. 8. Section 30108 of the Revenue and Taxation Code is*
 18 *amended to read:*

19 30108. (a) Every distributor engaged in business in this state
 20 and selling or accepting orders for cigarettes or tobacco products
 21 with respect to the sale of which the tax imposed by Sections
 22 ~~30101, 30123, and 30131.2~~ *under this part* is inapplicable shall,
 23 at the time of making the sale or accepting the order or, if the
 24 purchaser is not then obligated to pay the tax with respect to his
 25 or her distribution of the cigarettes or tobacco products, at the time
 26 the purchaser becomes so obligated, collect the tax from the
 27 purchaser, if the purchaser is other than a licensed distributor, and
 28 shall give to the purchaser a receipt therefor in the manner and
 29 form prescribed by the board.

30 (b) Every person engaged in business in this state and making
 31 gifts of untaxed cigarettes or tobacco products as samples with
 32 respect to which the tax imposed by Sections ~~30101, 30123, and~~
 33 ~~30131.2~~ *under this part* is inapplicable shall, at the time of making
 34 the gift or, if the donee is not then obligated to pay the tax with
 35 respect to his or her distribution of the cigarettes or tobacco
 36 products, at the time the donee becomes so obligated, collect the
 37 tax from the donee, if the donee is other than a licensed distributor,
 38 and shall give the donee a receipt therefor in the manner and form
 39 prescribed by the board. This section shall not apply to those

1 distributions of cigarettes or tobacco products which are exempt
2 from tax under Section 30105.5.

3 (c) “Engaged in business in the state” means and includes any
4 of the following:

5 (1) Maintaining, occupying, or using, permanently or
6 temporarily, directly or indirectly, or through a subsidiary, or agent,
7 by whatever name called, an office, place of distribution, sales or
8 sample room or place, warehouse or storage place, or other place
9 of business.

10 (2) Having any representative, agent, salesperson, canvasser or
11 solicitor operating in this state under the authority of the distributor
12 or its subsidiary for the purpose of selling, delivering, or the taking
13 of orders for cigarettes or tobacco products.

14 (d) The taxes required to be collected by this section constitute
15 debts owed by the distributor, or other person required to collect
16 the taxes, to the state.

17 *SEC. 9. Article 2.5 (commencing with Section 30130.3) is added*
18 *to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation*
19 *Code, to read:*

20
21 *Article 2.5. Cigarette and Tobacco Products Excise Tax*
22

23 *30130.3. The following definitions apply for purposes of this*
24 *article:*

25 (a) “Cigarette” has the same meaning as in Section 30003, as
26 it read on January 1, 2009.

27 (b) “Tobacco products” includes, but is not limited to, all forms
28 of cigars, smoking tobacco, chewing tobacco, snuff, and any other
29 articles or products made of, or containing at least 50 percent,
30 tobacco, but does not include cigarettes.

31 *30130.5. In addition to any other tax imposed under this part,*
32 *an excise tax is hereby imposed upon every distributor of cigarettes*
33 *at the rate of seventy-five mills (\$0.075) for each cigarette*
34 *distributed on and after October 1, 2009.*

35 *30130.52. (a) (1) Every dealer and wholesaler, for the*
36 *privilege of holding or storing cigarettes for sale, use, or*
37 *consumption, shall pay a floor stock tax for each cigarette in his*
38 *or her possession or under his or her control in this state at 12:01*
39 *a.m. on October 1, 2009, at the rate of seventy-five mills (\$0.075)*
40 *for each cigarette.*

(2) Every dealer and wholesaler shall file a return with the State Board of Equalization on or before November 16, 2009, on a form prescribed by the board, showing the number of cigarettes in his or her possession or under his or her control at 12:01 a.m. on October 1, 2009. The amount of tax shall be computed and shown on the return.

(b) (1) Every licensed cigarette distributor, for the privilege of distributing cigarettes and for holding or storing cigarettes for sale, use, or consumption, shall pay a cigarette indicia adjustment tax for each California cigarette tax stamp that is affixed to any package of cigarettes and for each unaffixed California cigarette tax stamp in his or her possession or under his or her control at 12:01 a.m. on October 1, 2009, at the following rates:

(A) One dollar and eight hundred seventy-five mills (\$1.875) for each stamp bearing the designation "25."

(B) One dollar and fifty cents (\$1.50) for each stamp bearing the designation "20."

(C) Seventy-five cents (\$0.75) for each stamp bearing the designation "10."

(2) Every licensed cigarette distributor shall file a return with the board on or before November 16, 2009, on a form prescribed by the board, showing the number of stamps described in subparagraphs (A), (B), and (C), of paragraph (1). The amount of tax shall be computed and shown on the return.

(c) The taxes required to be paid by this section are due and payable on November 16, 2009. Payments shall be made by remittances payable to the State Board of Equalization and the payments shall accompany the forms required to be filed by this section.

(d) Any amount required to be paid by this section that is not timely paid shall bear interest at the rate and by the method established pursuant to Section 30202 from November 16, 2009, until paid, and shall be subject to determination, and redetermination, and any penalties provided with respect to determinations and redeterminations.

30130.54. (a) In addition to the taxes imposed upon the distribution of tobacco products by this chapter, there shall be imposed, on and after July 1, 2010, an additional tax upon every distributor of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State

1 *Board of Equalization, that is equivalent to the rate of tax imposed*
2 *on cigarettes by Section 30130.5.*

3 *(b) The wholesale cost used to calculate the amount of tax due*
4 *under this section does not include the wholesale cost of tobacco*
5 *products that were returned by a customer during the same*
6 *reporting period in which the tobacco products were distributed,*
7 *when the distributor refunds the entire amount the customer paid*
8 *for the tobacco products either in cash or credit. For purposes of*
9 *this subdivision, refund or credit of the entire amount shall be*
10 *deemed to be given when the purchase price less rehandling and*
11 *restocking costs is refunded or credited to the customer. The*
12 *amount withheld for rehandling and restocking costs may be a*
13 *percentage of the sales price determined by the average cost of*
14 *rehandling and restocking returned merchandise during the*
15 *previous accounting cycle.*

16 *30130.56. The taxes imposed under this article shall be*
17 *administered and collected in accordance with this part.*

18 *30130.58. (a) Except for payments of refunds made pursuant*
19 *to Article 1 (commencing with Section 30361) of Chapter 6, and*
20 *reimbursement to the State Board of Equalization for expenses*
21 *incurred in the administration and collection of the tax imposed*
22 *by this article, all moneys derived from a tax imposed pursuant to*
23 *this article shall be deposited into the General Fund.*

24 *(b) This section shall not apply to any moneys raised pursuant*
25 *to the taxes imposed by subdivision (b) of Section 30123.*

26 *30130.59. The annual determination required of the State*
27 *Board of Equalization pursuant to Section 30130.54 shall be made*
28 *based on the wholesale cost of tobacco products as of March 1,*
29 *and shall be effective during the state's next fiscal year.*

30 *SEC. 10. Section 30165.1 of the Revenue and Taxation Code*
31 *is amended to read:*

32 *30165.1. (a) The following definitions shall apply for purposes*
33 *of this section:*

34 *(1) "Board" means the State Board of Equalization.*

35 *(2) "Brand family" means all styles of cigarettes sold under the*
36 *same trademark and differentiated from one another by means of*
37 *additional modifiers, including, but not limited to, "menthol,"*
38 *"lights," "kings," and "100s" and includes any brand name, alone*
39 *or in conjunction with any other word, trademark, logo, symbol,*
40 *motto, selling message, recognizable pattern of colors, or any other*

1 indicia of product identification identical or similar to, or
2 identifiable with, a previously known brand of cigarettes.

3 (3) “Cigarette” has the same meaning as in subdivision (d) of
4 Section 104556 of the Health and Safety Code and includes tobacco
5 products defined as a cigarette under that subdivision.

6 (4) “Distributor” has the same meaning as in Section 30011.

7 (5) “MSA” means the Master Settlement Agreement, as defined
8 in subdivision (e) of Section 104556 of the Health and Safety Code.

9 (6) “Nonparticipating manufacturer” means any tobacco product
10 manufacturer that is not a participating manufacturer.

11 (7) “Participating manufacturer” has the same meaning as in
12 subsection II(jj) of the MSA.

13 (8) “Qualified escrow fund” has the same meaning as in
14 subdivision (f) of Section 104556 of the Health and Safety Code.

15 (9) “Tobacco product manufacturer” has the same meaning as
16 in subdivision (i) of Section 104556 of the Health and Safety Code.

17 (10) “Units sold” has the same meaning as in subdivision (j) of
18 Section 104556 of the Health and Safety Code.

19 (b) Every tobacco product manufacturer whose cigarettes are
20 sold in this state, whether directly or through a distributor, retailer,
21 or similar intermediary or intermediaries, shall execute and deliver
22 on a form and in the manner prescribed by the Attorney General
23 a certification to the Attorney General no later than the 30th day
24 of April each year that, as of the date of the certification, the
25 tobacco product manufacturer is either a participating manufacturer,
26 or is in full compliance with Article 3 (commencing with Section
27 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
28 Safety Code, including all installment payments required by that
29 article and this section, and any regulations promulgated pursuant
30 thereto. Any person who makes a certification pursuant to this
31 subdivision that asserts the truth of any material matter that he or
32 she knows to be false is guilty of a misdemeanor punishable by
33 imprisonment of up to one year in the county jail, or a fine of not
34 more than one thousand dollars (\$1,000), or both the imprisonment
35 and the fine.

36 (1) A participating manufacturer shall include in its certification
37 a complete list of its brand families. The participating manufacturer
38 shall update the list 30 days prior to any addition to or modification
39 of its brand families by executing and delivering a supplemental
40 certification to the Attorney General.

1 (2) A nonparticipating manufacturer shall include in its
2 certification a complete list of all of its brand families, in
3 accordance with the following requirements:

4 (A) Separately listing brand families of cigarettes and the
5 number of units sold for each brand family that were sold in the
6 state during the preceding calendar year.

7 (B) Separately listing all of its brand families that have been
8 sold in the state at any time during the current calendar year.

9 (C) Indicating by an asterisk any brand family sold in the state
10 during the preceding calendar year that is no longer being sold in
11 the state as of the date of the certification.

12 (D) Identifying by name and address any other manufacturer,
13 including all fabricators or makers of the brand families in the
14 preceding or current calendar year in a form, manner, and detail
15 as required by the Attorney General. The nonparticipating
16 manufacturer shall update the list 30 days prior to any change in
17 a fabricator for any brand family or any addition to or modification
18 of its brand families by executing and delivering a supplemental
19 certification to the Attorney General.

20 (3) In the case of a nonparticipating manufacturer, the
21 certification shall further certify all of the following:

22 (A) That the nonparticipating manufacturer is registered to do
23 business in the state, or has appointed a resident agent for service
24 of process and provided notice thereof as required by subdivision
25 (f).

26 (B) That the nonparticipating manufacturer has done all of the
27 following:

28 (i) Established and continues to maintain a qualified escrow
29 fund as that term is defined in subdivision (f) of Section 104556
30 of the Health and Safety Code and implementing regulations.

31 (ii) Executed a qualified escrow agreement that has been
32 reviewed and approved by the Attorney General and that governs
33 the qualified escrow fund.

34 (iii) If the nonparticipating manufacturer is not the fabricator
35 or maker of the cigarettes, that the escrow agreement, certification,
36 reports, and any other forms required by Article 3 (commencing
37 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
38 the Health and Safety Code and implementing regulations are
39 signed by the company that fabricates or makes the cigarettes and
40 in the manner required by the Attorney General.

1 (C) That the nonparticipating manufacturer is in full compliance
2 with Article 3 (commencing with Section 104555) of Chapter 1
3 of Part 3 of Division 103 of the Health and Safety Code, including
4 paragraph (2) of subdivision (a) of Section 104557 of the Health
5 and Safety Code, this section, and any regulations promulgated
6 pursuant thereto.

7 (D) That the manufacturer has provided all of the following:

8 (i) The name, address, and telephone number of the financial
9 institution where the nonparticipating manufacturer has established
10 the qualified escrow fund required pursuant to Article 3
11 (commencing with Section 104555) of Chapter 1 of Part 3 of
12 Division 103 of the Health and Safety Code and all regulations
13 promulgated thereto.

14 (ii) The account number of the qualified escrow fund and
15 subaccount number for the State of California.

16 (iii) The amount the nonparticipating manufacturer placed in
17 the fund for cigarettes sold in the state during the preceding
18 calendar year, the date and amount of each deposit, and any
19 confirming evidence or verification as may be deemed necessary
20 by the Attorney General.

21 (iv) The amounts and dates of any withdrawal or transfer of
22 funds the nonparticipating manufacturer made at any time from
23 the fund or from any other qualified escrow fund into which it ever
24 made escrow payments pursuant to Article 3 (commencing with
25 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
26 Health and Safety Code and all regulations promulgated thereto.

27 (4) (A) A tobacco product manufacturer may not include a
28 brand family in its certification unless either of the following is
29 true:

30 (i) In the case of a participating manufacturer, the participating
31 manufacturer affirms that the brand family is to be deemed to be
32 its cigarettes for purposes of calculating its payments under the
33 MSA for the relevant year, in the volume and shares determined
34 pursuant to the MSA.

35 (ii) In the case of a nonparticipating manufacturer, the
36 nonparticipating manufacturer affirms that the brand family is to
37 be deemed to be its cigarettes for purposes of Article 3
38 (commencing with Section 104555) of Chapter 1 of Part 3 of
39 Division 103 of the Health and Safety Code, including paragraph
40 (2) of subdivision (a) of Section 104557 of the Health and Safety

1 Code, and any regulations promulgated pursuant thereto and this
2 section.

3 (B) Nothing in this section shall be construed as limiting or
4 otherwise affecting the state's right to maintain that a brand family
5 constitutes cigarettes of a different tobacco product manufacturer
6 for purposes of calculating payments under the MSA or for
7 purposes of Article 3 (commencing with Section 104555) of
8 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code
9 and any regulations promulgated pursuant thereto.

10 (5) A tobacco product manufacturer shall maintain all invoices
11 and documentation of sales and other information relied upon for
12 the certification for a period of five years, unless otherwise required
13 by law to maintain them for a longer period of time.

14 (c) Not later than June 30, 2004, the Attorney General shall
15 develop and publish on its Internet Web site a directory listing of
16 all tobacco product manufacturers that have provided current,
17 timely, and accurate certifications conforming to the requirements
18 of subdivision (b) and all brand families that are listed in the
19 certifications, except as specified below.

20 (1) The Attorney General may not include or retain in the
21 directory the name or brand families of any nonparticipating
22 manufacturer that fails to provide the required certification or
23 whose certification the Attorney General determines is not in
24 compliance with subdivision (b), unless the Attorney General has
25 determined that the violation has been cured to the satisfaction of
26 the Attorney General.

27 (2) Neither a tobacco product manufacturer nor brand family
28 shall be included or retained in the directory if the Attorney General
29 concludes that either of the following is true:

30 (A) In the case of a nonparticipating manufacturer, any escrow
31 deposit required pursuant to Section 104557 of the Health and
32 Safety Code for any period for any brand family, whether or not
33 listed by the nonparticipating manufacturer, has not been fully
34 deposited into a qualified escrow fund governed by a qualified
35 escrow agreement that has been approved by the Attorney General.

36 (B) Any outstanding final judgment, including interest thereon,
37 for violations of Article 3 (commencing with Section 104555) of
38 Chapter 1 of Part 3 of Division 103 of the Health and Safety Code,
39 this section, and any regulations promulgated pursuant thereto,

1 has not been fully satisfied for the brand family and the
2 manufacturer.

3 (3) The Attorney General shall update the directory as necessary
4 in order to correct mistakes and to add or remove a tobacco product
5 manufacturer or brand family to keep the directory in conformity
6 with the requirements of this section. The Attorney General shall
7 promptly provide distributors with written notice of each tobacco
8 product manufacturer and brand family that the Attorney General
9 has added to, or excluded or removed from the list.

10 (4) Every distributor shall provide to the Attorney General and
11 update, as necessary, an electronic mail address for the purpose
12 of receiving any notifications as may be required by this section.

13 (5) The Attorney General shall provide each tobacco product
14 manufacturer that has provided all certifications and other
15 information required by this section with a written acknowledgment
16 of receipt within seven business days after receiving the
17 certifications and other materials. Each tobacco product
18 manufacturer shall provide to each distributor to whom it sells or
19 ships cigarettes, or any tobacco product defined as a cigarette under
20 this section, a copy of each acknowledgment of receipt provided
21 to the manufacturer by the Attorney General. Upon request, the
22 Attorney General shall provide any distributor with a copy of the
23 most recent written acknowledgment of receipt provided to the
24 tobacco product manufacturer.

25 (d) (1) The Attorney General may exclude or remove from the
26 list required by subdivision (c) a tobacco product manufacturer or
27 any of its brand families, based on a determination that the
28 manufacturer is not a participating manufacturer and has not made
29 all escrow payments required by paragraph (2) of subdivision (a)
30 of Section 104557 of the Health and Safety Code, in accordance
31 with that subdivision, or has not complied with this section. Before
32 the exclusion or removal may take effect, the Attorney General
33 shall notify the manufacturer of this determination.

34 (2) Upon receiving notice from the Attorney General pursuant
35 to paragraph (1), the manufacturer may challenge the Attorney
36 General's determination as erroneous, and may seek relief from
37 the determination, by filing a petition for writ of mandate pursuant
38 to Section 1085 of the Code of Civil Procedure for that purpose
39 in the Superior Court for the County of Sacramento, or as otherwise
40 provided by law. The filing of the petition shall operate to stay the

1 Attorney General's determination, if the manufacturer has paid
2 into escrow the full amount of any deficiency in the escrow
3 payments that the Attorney General has determined the tobacco
4 product manufacturer was required to have made under paragraph
5 (2) of subdivision (a) of Section 104557 of the Health and Safety
6 Code, including any installment payments required under
7 subdivision (h), pending final resolution of the action.

8 (e) (1) No person shall affix, or cause to be affixed, any tax
9 stamp or meter impression to a package of cigarettes pursuant to
10 subdivision (a) of Section 30163, or pay the tax levied pursuant
11 to ~~Sections 30123 and 30131.2~~ *this part* on a tobacco product
12 defined as a cigarette under this section, unless the brand family
13 of the cigarettes or tobacco product, and the tobacco product
14 manufacturer that makes or sells the cigarettes or tobacco product,
15 are included on the list posted by the Attorney General pursuant
16 to subdivision (c).

17 (2) No person shall sell, offer, or possess for sale in this state,
18 or import for personal consumption in this state, cigarettes of a
19 tobacco product manufacturer or brand family not included in the
20 directory.

21 (3) No person shall do either of the following:

22 (A) Sell or distribute cigarettes that the person knows or should
23 know are intended to be distributed in violation of paragraphs (1)
24 and (2).

25 (B) Acquire, hold, own, possess, transport, import, or cause to
26 be imported cigarettes that the person knows or should know are
27 intended to be distributed in violation of paragraphs (1) and (2).

28 (f) (1) Any nonresident or foreign nonparticipating manufacturer
29 that has not registered to do business in the state as a foreign
30 corporation or business entity shall, as a condition precedent to
31 having its brand families listed or retained in the directory, appoint
32 and continually engage without interruption the services of an
33 agent in this state to act as agent for the service of process on whom
34 all process, and any action or proceeding against it concerning or
35 arising out of the enforcement of this section, Article 3
36 (commencing with Section 104555) of Chapter 1 of Part 3 of
37 Division 103 of the Health and Safety Code, and any regulations
38 promulgated pursuant thereto, may be served in any manner
39 authorized by law. This service shall constitute legal and valid
40 service of process on the nonparticipating manufacturer. The

1 nonparticipating manufacturer shall provide the name, address,
2 telephone number, and proof of the appointment and availability
3 of the agent to the satisfaction of the Attorney General.

4 (2) The nonparticipating manufacturer shall provide notice to
5 the Attorney General 30 calendar days prior to termination of the
6 authority of an agent and shall further provide proof to the
7 satisfaction of the Attorney General of the appointment of a new
8 agent no less than five calendar days prior to the termination of
9 an existing agent appointment. In the event an agent terminates an
10 agency appointment, the nonparticipating manufacturer shall notify
11 the Attorney General of said termination within five calendar days
12 and shall include proof to the satisfaction of the Attorney General
13 of the appointment of a new agent.

14 (3) Any nonparticipating manufacturer whose products are sold
15 in this state without appointing or designating an agent as herein
16 required shall be deemed to have appointed the Secretary of State
17 as its agent, as provided in Section 2105 of the Corporations Code,
18 and may be proceeded against in courts of this state by service of
19 process upon the Secretary of State. However, the appointment of
20 the Secretary of State pursuant to this provision as the agent for
21 service of process does not satisfy the condition precedent specified
22 in paragraph (1) to having its brand families listed or retained in
23 the directory.

24 (g) (1) Not later than 25 days after the end of each calendar
25 quarter, and more frequently if so directed by the board or the
26 Attorney General, each distributor shall submit any information
27 as the board or Attorney General requires to facilitate compliance
28 with this section, including, but not limited to, a list by brand
29 family of the total number of cigarettes or in the case of roll your
30 own, the total ounces for which the distributor affixed stamps
31 during the previous calendar month or otherwise paid the tax due
32 for those cigarettes. The distributor shall maintain, and shall make
33 available to the board and the Attorney General, all invoices and
34 documentation of sales of all nonparticipating manufacturer
35 cigarettes and any other information relied upon in reporting to
36 the board and the Attorney General for a period of five years.

37 (2) Notwithstanding Section 30455, the board is authorized to
38 disclose to the Attorney General any information received under
39 this part for purposes of determining compliance with and
40 enforcing the provisions of this section and Article 3 (commencing

1 with Section 104555) of Chapter 1 of Part 3 of Division 103 of
2 the Health and Safety Code, and any regulations promulgated
3 pursuant thereto. The board and Attorney General shall share with
4 each other the information received under this section, and may
5 share that information with other federal, state, or local agencies,
6 only for purposes of enforcement of this section, Article 3
7 (commencing with Section 104555) of Chapter 1 of Part 3 of
8 Division 103 of the Health and Safety Code, and any regulations
9 promulgated pursuant thereto, or corresponding laws of other
10 states.

11 (3) At any time, the Attorney General may require from the
12 nonparticipating manufacturer proof from the financial institution
13 in which the manufacturer has established a qualified escrow fund
14 for the purpose of compliance with Article 3 (commencing with
15 Section 104555) of Chapter 1 of Part 3 of Division 103 of the
16 Health and Safety Code, and any regulations promulgated pursuant
17 thereto, of the amount of money in the fund being held on behalf
18 of the state and the dates of deposits, and listing the amounts of
19 all withdrawals from the fund and the dates thereof.

20 (4) In addition to the information required to be submitted
21 pursuant to this section or Article 3 (commencing with Section
22 104555) of Chapter 1 of Part 3 of Division 103 of the Health and
23 Safety Code and any regulations promulgated pursuant thereto,
24 the board or the Attorney General may require a retailer,
25 wholesaler, distributor, or tobacco product manufacturer to submit
26 any additional information, including, but not limited to, samples
27 of the packaging or labeling of each brand family, as is necessary
28 to enable the Attorney General to determine whether a tobacco
29 product manufacturer is in compliance with this section, or Article
30 3 (commencing with Section 104555) of Chapter 1 of Part 3 of
31 Division 103 of the Health and Safety Code, and any regulations
32 promulgated pursuant thereto.

33 (h) To promote compliance with this section, the Attorney
34 General may promulgate regulations requiring a tobacco product
35 manufacturer subject to the requirements of paragraph (2) of
36 subdivision (a) of Section 104557 to make the escrow deposits
37 required in quarterly or other specified installments during the year
38 in which the sales covered by the deposits are made. The Attorney
39 General may require production of information sufficient to enable

1 the Attorney General to determine the adequacy of the amount of
2 the installment deposit.

3 (i) (1) In addition to any other civil or criminal penalty provided
4 by law, upon a finding that a distributor has violated subdivision
5 (e), or paragraph (1) of subdivision (g), the board may take the
6 following actions:

7 (A) In the case of the first offense, the board may revoke or
8 suspend the license or licenses of the distributor pursuant to the
9 procedures applicable to the revocation of a license set forth in
10 Section 30148.

11 (B) In the case of a second or any subsequent offense, in addition
12 to the action authorized under subparagraph (A), the board may
13 impose a civil penalty in an amount not to exceed the greater of
14 either of the following:

15 (i) Five times the retail value of the cigarettes or tobacco
16 products defined as cigarettes under this section.

17 (ii) Five thousand dollars (\$5,000).

18 (2) A distributor in any action for a violation of subdivision (e)
19 shall have a defense provided that either of the following is true:

20 (A) At the time of the violation, the cigarettes or tobacco
21 products claimed to be the subject of the alleged violation belonged
22 to a brand family that was included on the list required by
23 subdivision (c).

24 (B) At the time of the violation, the distributor possessed a copy
25 of the Attorney General's most recent written acknowledgment of
26 receipt of the certifications and other information required as a
27 condition of including the brand family on the list required by
28 subdivision (c).

29 (3) The defense described in subparagraph (B) of paragraph (2)
30 is not available to a distributor if, at the time of the violation, the
31 Attorney General had provided the distributor with written notice
32 that the brand family had been excluded or removed from the list
33 required by subdivision (c), or the distributor failed to provide the
34 Attorney General with a current address for the receipt of written
35 notice through electronic mail as required by paragraph (4) of
36 subdivision (c).

37 (4) A violation of paragraph (3) of subdivision (e) shall
38 constitute a misdemeanor.

39 (j) If a distributor affixes a stamp or meter impression to a
40 package of cigarettes under subdivision (a) of Section 30163, or

1 pays the tax levied under Sections 30123 and 30131.2 *this part* on
2 a tobacco product defined as a cigarette under this section, during
3 the period between the date on which the brand family of the
4 cigarettes or tobacco product was excluded or removed from the
5 list required by subdivision (c) and the date on which the distributor
6 received notice of the exclusion or removal under paragraph (4)
7 of subdivision (c), then both of the following shall apply:

8 (1) The distributor shall be entitled to a credit for the tax paid
9 by the distributor with respect to the cigarette or tobacco product
10 to which the stamp or meter impression was affixed, or the tax
11 paid during that period. The distributor shall comply with
12 regulations prescribed by the board regarding refunds and credits
13 that are adopted pursuant to Section 30177.5. If the distributor has
14 sold the cigarette or tobacco product to a wholesaler or retailer,
15 and has received payment from the wholesaler or retailer, the
16 distributor shall provide the credit to the wholesaler or retailer.

17 (2) The brand family may not be included on or restored to the
18 list until the tobacco product manufacturer has reimbursed the
19 distributor for the cost to the distributor of the cigarettes or tobacco
20 product to which the stamp or meter impression was affixed, or
21 the tax paid, during that period.

22 (k) Any tobacco product manufacturer that falsely represents
23 any of the following to any person shall be guilty of a misdemeanor
24 for each false representation:

25 (1) Any information required under subdivision (b).

26 (2) That the tobacco product manufacturer is a participating
27 manufacturer.

28 (3) That the tobacco product manufacturer or any other person
29 has made any or all escrow payments required by paragraph (2)
30 of subdivision (a) of Section 104557 of the Health and Safety
31 Code, if applicable to the manufacturer.

32 (4) That it has complied with subdivision (b), or with paragraph
33 (1) of subdivision (g), if applicable to the manufacturer.

34 (l) A violation of subdivision (e) shall constitute unfair
35 competition under Section 17200 of the Business and Professions
36 Code.

37 (m) No person shall be issued a distributor's license, pursuant
38 to Section 30140, unless that person has certified in writing that
39 the person will comply fully with this section. Any person who
40 makes a certification pursuant to this subdivision that asserts the

1 truth of any material matter that he or she knows to be false is
2 guilty of a misdemeanor punishable by imprisonment of up to one
3 year in the county jail, or a fine of not more than one thousand
4 dollars (\$1,000), or both the imprisonment and the fine.

5 (n) For the year 2003, if the effective date of the act that added
6 this section is later than March 16, 2003, the first report of
7 distributors required by paragraph (1) of subdivision (g) shall be
8 due 30 days after that effective date, the certifications by a tobacco
9 product manufacturer described in subdivision (b) shall be due 45
10 days after that effective date, and the directory described in
11 subdivision (c) shall be published or made available within 90
12 days after that effective date.

13 (o) The Attorney General may adopt rules and regulations to
14 implement this section. The rules and regulations may establish
15 procedures for including in the list described in subdivision (c)
16 tobacco product manufacturers that are not participating
17 manufacturers and were not required to make escrow payments
18 under paragraph (2) of subdivision (a) of Section 104557 of the
19 Health and Safety Code, for sales made during any preceding
20 calendar year, and brand families of those manufacturers. The rules
21 and regulations may also establish procedures for seizure and
22 destruction of cigarettes forfeited to the state pursuant to Section
23 30436 or Section 30449, including, but not limited to, the state
24 facilities that may be used for the destruction of contraband
25 cigarettes. Nothing in this section shall affect the authority of local
26 law enforcement and local government officials to seize and destroy
27 contraband under existing state or local law. The regulations
28 adopted to effect the purposes of this section are emergency
29 regulations in accordance with Chapter 3.5 (commencing with
30 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
31 Code. For purposes of that chapter, including Section 11349.6 of
32 the Government Code, the adoption of the regulations shall be
33 considered by the Office of Administrative Law to be necessary
34 for the immediate preservation of the public peace, health and
35 safety, and general welfare. Notwithstanding subdivision (e) of
36 Section 11346.1 of the Government Code, the regulations shall be
37 repealed 180 days after their effective date, unless the adopting
38 authority or agency complies with that chapter, as provided in
39 subdivision (e) of Section 11346.1 of the Government Code.

(p) In any action brought by the state to enforce this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(q) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state.

SEC. 11. Section 30181 of the Revenue and Taxation Code is amended to read:

30181. (a) When any tax imposed upon cigarettes under ~~Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2~~ this part is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form, as prescribed by the board, which may include, but not be limited to, electronic media respecting the distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under ~~Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2~~ this part for that period.

(c) To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods.

(d) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

~~(e) This section shall become operative on January 1, 2007.~~

SEC. 12. Section 30436 of the Revenue and Taxation Code is amended to read:

1 30436. The following property, upon seizure by the board, is
2 hereby forfeited to the state:

3 (a) Cigarettes or tobacco products transported upon the
4 highways, roads, or streets of this state in violation of Section
5 30431 or Section 30432.

6 (b) Cigarettes not contained in packages to which are affixed
7 California cigarette tax stamp or meter impressions or tobacco
8 products upon which the tobacco products surtax has not been
9 paid, which are offered for sale, possessed, kept, stored, or owned
10 by any person with the intent of the person to sell the cigarettes or
11 tobacco products without payment of the taxes imposed by this
12 part.

13 (c) Any cigarette or tobacco product vending machine, together
14 with the cigarettes, tobacco products, money or other contents
15 thereof, that has been loaded, in whole or in part, with packages
16 of cigarettes that do not have California cigarette tax stamps or
17 meter impressions affixed or tobacco products upon which the
18 tobacco products surtax has not been paid.

19 (d) Cigarettes contained in packages to which are affixed
20 California cigarette tax stamps or meter impressions in violation
21 of Section 30163.

22 (e) Cigarettes or tobacco products to which are affixed California
23 cigarette tax stamps or meter impressions, or for which tax is paid
24 pursuant to ~~Sections 30123 and 30131.2~~ *this part*, in violation of
25 Section 30165.1, regardless of whether the violation is subject to
26 the defense described in paragraph (2) of subdivision (i) of Section
27 30165.1.

28 *SEC. 13. Part 21 (commencing with Section 42001) is added*
29 *to Division 2 of the Revenue and Taxation Code, to read:*
30

31 *PART 21. OIL SEVERANCE TAX LAW*
32

33 *42001. This part shall be known and may be cited as the Oil*
34 *Severance Tax Law.*

35 *42002. For purposes of this part, the following definitions shall*
36 *apply:*

37 (a) *“Barrel of oil” means 42 United States gallons of 231 cubic*
38 *inches per gallon computed at a temperature of 60 degrees*
39 *Fahrenheit.*

40 (b) *“Department” means the Department of Conservation.*

1 (c) “Gross value” means the sale price at the mouth of the well
2 in the case of oil, including any bonus, premium, or other thing of
3 value paid for the oil. If there is no sale at the time of severance,
4 “gross value” means the sale price when the oil is sold, including
5 any bonus, premium, or other thing of value paid for the oil. If oil
6 is exchanged for something other than cash, or if the relation
7 between the buyer and the seller is such that the consideration
8 paid, if any, is not indicative of the true value or market price,
9 then the department shall determine the value of the oil subject to
10 the tax based on the cash price paid to producers for like quality
11 oil in the vicinity of the well.

12 (d) “Oil” means petroleum, or other crude oil, condensate,
13 casing head gasoline, or other mineral oil that is mined, produced,
14 or withdrawn from below the surface of the soil or water in this
15 state.

16 (e) “Producer” means any person or entity that takes oil from
17 the earth or water in this state in any manner; any person that
18 owns, controls, manages, or leases any oil well in the earth or
19 water of this state; any person that produces or extracts in any
20 manner any oil by taking it from the earth or water in this state;
21 any person that acquires the severed oil from a person or agency
22 exempt from property taxation under the United States Constitution
23 or other laws of the United States or under the California
24 Constitution or other laws of the State of California; and any
25 person that owns an interest, including a royalty interest, in oil or
26 its value, whether the oil is produced by the person owning the
27 interest or by another on the person’s behalf by lease, contract,
28 or other arrangement.

29 (f) “Production” means the total gross amount of oil produced,
30 including the gross amount attributable to a royalty or other
31 interest.

32 (g) “Severed” or “severing” means the extraction or
33 withdrawing from below the surface of the earth or water of any
34 oil, regardless of whether the extraction or withdrawal shall be
35 by natural flow, mechanical flow, forced flow, pumping, or any
36 other means employed to get the oil from below the surface of the
37 earth or water, and shall include the extraction or withdrawal by
38 any means whatsoever of oil upon which the tax has not been paid,
39 from any surface reservoir, natural or artificial, or from a water
40 surface.

1 (h) “Stripper well” means a well that has been certified by the
2 department as an oil well incapable of producing an average of
3 more than 10 barrels of oil per day during the entire taxable month.
4 Once a well has been certified as a stripper well, that stripper well
5 shall remain certified as a stripper well until the well produces an
6 average of more than 10 barrels of oil per day during an entire
7 taxable month.

8 42003. (a) On and after October 1, 2009, for the privilege of
9 severing oil from the earth or water in this state for sale, transport,
10 consumption, storage, profit, or use, a tax is hereby imposed upon
11 all producers at the rate of 9.9 percent of the gross value of each
12 barrel of oil severed. The tax shall be applied equally to all
13 portions of the gross value of each barrel of oil severed.

14 (b) Notwithstanding subdivision (a), for each calendar year
15 beginning on and after January 1, 2011, the 9.9 percent rate
16 specified in subdivision (a) shall be subject to adjustment in
17 accordance with subdivision (c) of Section 16031 of the Insurance
18 Code, but any adjustment shall not result in a rate that exceeds
19 9.9 percent.

20 42004. Except as otherwise provided in this part, the tax shall
21 be upon the entire production in this state, regardless of the place
22 of sale or to whom sold or by whom used, or the fact that the
23 delivery may be made to points outside the state.

24 42005. The tax imposed by this part shall be in addition to any
25 ad valorem taxes imposed by the state, or any of its political
26 subdivisions, or any local business license taxes that may be
27 incurred as a privilege of severing oil from the earth or water or
28 doing business in that locality. There shall be no exemption from
29 payment of an ad valorem tax related to equipment, material, or
30 property by reason of the payment of the gross severance tax
31 pursuant to this part.

32 42006. Two or more producers that are corporations and are
33 owned or controlled directly or indirectly, as defined in Section
34 25105, by the same interests shall be considered as a single
35 producer for purposes of application of the tax prescribed in this
36 part.

37 42007. (a) There shall be exempted from the imposition of the
38 oil severance tax imposed pursuant to this part oil produced by a
39 stripper well in which the average value of oil as of January 1 of
40 the prior year is less than thirty dollars (\$30) per barrel.

1 (b) *For oil produced in this state from a well that qualifies under*
2 *Section 3251 of the Public Resources Code or which has been*
3 *inactive for a period of at least the preceding five consecutive*
4 *years, the imposition of the oil severance tax shall be reduced to*
5 *zero for a period of 10 years.*

6 (c) *There shall be exempted from the imposition of the oil*
7 *severance tax imposed pursuant to this part all oil owned or*
8 *produced by the state and any political subdivision's (including*
9 *any local public entity, as defined by Section 900.4 of the*
10 *Government Code) proprietary share of oil produced under any*
11 *unit, cooperative, or other pooling agreement.*

12 42008. *The tax imposed by this part is due and payable to the*
13 *department quarterly on or before the last day of the month next*
14 *succeeding each calendar quarter.*

15 42009. (a) *Any person that fails to pay any tax within the time*
16 *required shall pay, in addition to the amount of tax owed, interest*
17 *at the rate of 1½ percent per month, or fraction thereof, from the*
18 *date on which the tax became due and payable until and including*
19 *the date of payment.*

20 (b) *Every payment on a delinquent tax owed pursuant to this*
21 *part shall be applied as follows:*

22 (1) *First, to any interest due on the tax.*

23 (2) *Second, to any penalty imposed by this part.*

24 (3) *Third, to the balance, if any, of the tax due.*

25 42010. *On or before the last day of the month following each*
26 *quarterly period of three months, a return for the preceding*
27 *quarterly period shall be filed with the department in the form as*
28 *the department may prescribe.*

29 42011. *The department shall deposit all tax revenues, penalties,*
30 *and interest collected pursuant to this part in the General Fund.*

31 42012. *The department may prescribe those forms and*
32 *reporting requirements as necessary to implement the tax,*
33 *including, but not limited to, information regarding the location*
34 *of the well by county, the gross amount of oil produced, the quantity*
35 *sold and the selling price, the prevailing market price of oil, and*
36 *the amount of tax due.*

37 42013. *The department shall administer and collect the tax*
38 *imposed by this part pursuant to the Fee Collection Procedures*
39 *Law (Part 30 (commencing with Section 55001) of Division 2).*
40 *For purposes of this part, the references in the Fee Collection*

1 *Procedures Law to “fee” shall include the tax imposed by this*
2 *part, to “feepayer” shall include a person required to pay the oil*
3 *severance tax, and to “board” shall mean the Department of*
4 *Conservation.*

5 *42014. The department may prescribe, adopt, and enforce*
6 *emergency regulations relating to the administration and*
7 *enforcement of this part. Any emergency regulations prescribed,*
8 *adopted, or enforced pursuant to this section shall be adopted in*
9 *accordance with Chapter 3.5 (commencing with Section 11340)*
10 *of Part 1 of Division 3 of Title 2 of the Government Code, and for*
11 *purposes of that chapter, including Section 11349.6 of the*
12 *Government Code, the adoption of these regulations is an*
13 *emergency and shall be considered by the Office of Administrative*
14 *Law as necessary for the immediate preservation of the public*
15 *peace, health and safety, and general welfare. Notwithstanding*
16 *Chapter 3.5 (commencing with Section 11340) of Part 1 of Division*
17 *3 of Title 2 of the Government Code, including subdivision (e) of*
18 *Section 11346.1 of the Government Code, any emergency*
19 *regulations adopted pursuant to this section shall be filed with,*
20 *but not be repealed by, the Office of Administrative Law, and shall*
21 *remain in effect until revised by the director.*

22 *42015. The provisions of this part are severable. If any*
23 *provision of this part or its application is held invalid, that*
24 *invalidity shall not affect other provisions or applications that can*
25 *be given effect without the invalid provision or application.*

26 *SEC. 14. Section 60709 is added to the Revenue and Taxation*
27 *Code, to read:*

28 *60709. (a) This part shall become inoperative on October 1,*
29 *2009. However, this part shall remain applicable for the collection*
30 *of assessments, the liability for which accrued prior to October 1,*
31 *2009, the making of any refunds and the effecting of any credits,*
32 *the disposition of money collected, and the commencement of any*
33 *action or proceeding pursuant to this part.*

34 *(b) Notwithstanding subdivision (a), Chapter 2 (commencing*
35 *with Section 60050) shall become inoperative on October 1, 2009,*
36 *and as of January 1, 2010, is repealed*

37 *SEC. 15. If Section 2, 5, 9, or 13 of this act is held invalid in*
38 *a court of competent jurisdiction, the remaining sections of this*
39 *act are not severable and shall not be given, or otherwise have,*
40 *any force or effect.*

1 *SEC. 16. No reimbursement is required by this act pursuant*
2 *to Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 *SEC. 17. This act addresses the fiscal emergency declared by*
11 *the Governor by proclamation on December 19, 2008, pursuant*
12 *to subdivision (f) of Section 10 of Article IV of the California*
13 *Constitution.*

14 *SEC. 18. This act provides for a tax levy within the meaning*
15 *of Article IV of the Constitution and shall go into immediate effect.*

16
17
18 **All matter omitted in this version of the bill**
19 **appears in the bill as amended in the**
20 **Senate February 14, 2009. (JR11)**
21